

Fair Political Practices Commission

To: Chairman Getman; Commissioners Downey, Knox and Swanson

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: February 19, 2003

1. California ProLife Council, Inc. v. Karen Getman et al.

This case involves a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's motion, after concluding that "the constitutional case or controversy requirement of ripeness cannot be satisfied." This resolved all claims in favor of the FPPC. The Court entered judgment accordingly on January 22, 2002, and plaintiff filed a timely Notice of Appeal with the Ninth Circuit Court of Appeal. The appellate case has been briefed by the parties, and by Amici The Brennan Center for Justice and the National Voting Rights Institute (joining in one brief) and the states of Washington, Nevada and Oregon (joining in one brief.) The matter was heard by Circuit Judges Rymer, Trott and Tallman on February 11, 2003, and is now pending decision.

2. Danny L. Gamel et al. v. FPPC

In September 2001, the Commission adopted the proposed decision of an Administrative Law Judge assessing a penalty of \$8,000 against plaintiffs for making campaign contributions in violation of §§ 84300 – 84302. Plaintiffs contested this decision by Writ of Mandate in the Fresno County Superior Court. On March 21, 2002, the Court upheld the Commission's determination that Dan Gamel and Rudy Olmos violated the Act, but vacated the finding against Gamel Inc. Penalties assessed against Dan Gamel were affirmed but the Court remanded the case to the Commission for reconsideration of the penalty assessed against Mr. Olmos. Plaintiffs filed a notice of appeal of the Superior Court's decision regarding the fines assessed against Mr. Gamel and the findings against Mr. Olmos. The matter has been briefed by the parties and is now awaiting a decision by the Court of Appeal.

3. *Levine et al. v. FPPC*

On January 22, 2002, four publishers of “slate mail” filed suit in Federal District Court alleging that the Act’s slate mail identification and disclosure requirements (§§ 84305.5 and 84305.6) violate their constitutional rights. The first of these statutes contains identification and disclaimer provisions in effect prior to enactment of Proposition 208, while § 84305.6 was introduced by Proposition 34. The Status Conference originally scheduled for April 29 was continued to June 10, 2002, to coincide with the hearing on plaintiffs’ motion for preliminary injunction before Judge Lawrence K. Karlton. The hearing was conducted on July 29, 2002. The Court declined to conduct a Status Conference on the ground that its ruling on the preliminary injunction might affect pretrial scheduling. On September 25, 2002, the court entered a preliminary injunction barring FPPC enforcement of the challenged statutes against three of the four plaintiffs. The court has not yet issued a Scheduling Order or set a further Status Conference, which would establish a trial date and timelines for pretrial proceedings.

4. *FPPC v. Californians Against Corruption et al*

This case is now pending before the Third District Court of Appeal. The case stems from the FPPC’s 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of section 84211 of the Political Reform Act. In November 1995, the FPPC issued a default decision and order against the defendants, imposing an administrative penalty of \$808,000. In January 1996, the FPPC filed a collection action in the Sacramento Superior Court to reduce the penalty to a civil judgment. The defendants responded by filing a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed the defendants’ cross-complaint/petition for writ of mandate for failure to prosecute. In March 2001, the Superior Court granted the FPPC’s motion for summary judgment in the collection action, and ordered defendants to pay the \$808,000 penalty plus interest. The defendants then filed this appeal in April 2001 and filed their opening brief in October 2001. The FPPC filed its response brief in April, and defendants timely filed their reply. The court requested supplemental briefing, which has been completed. The court then indicated that it was prepared to decide the matter without oral argument, but on February 11, 2003 defendants filed a request for argument, which has now been scheduled for April 22, 2003, at 9:30 am.

5. *Peninsula Health Care District v. FPPC*

This case challenges the Commission’s recent Opinion, *In re Hanko*, O-02-088, adopted on August 9, 2002. The Commission concluded that a customer of Ms. Hanko’s employer could be a disqualifying source of income under certain circumstances, even though the customer dealt with Ms. Hanko’s employer through an intermediary. A Petition for Writ of Mandate was filed in the Court of Appeal on or about November 1, 2002. A week later, the Court of Appeal denied the writ without prejudice to re-filing in an appropriate superior court. On November 15, 2002, plaintiff filed a new

Petition in the Sacramento County Superior Court. The hearing originally set for January 31 was conducted on February 7, 2003, and a decision is now pending.

6. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions. The suit also alleges that the Agua Caliente Band failed to timely disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. The Agua Caliente Band has filed a Motion to Quash Service for Lack of Personal Jurisdiction, alleging that it is not required to comply with the Political Reform Act because of its tribal sovereign immunity. A hearing on that motion was held on January 8, 2003, before the Honorable Loren McMaster, Judge, in Department 53 of the Sacramento County Superior Court, and a decision is now pending.

7. *FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria*

The FPPC alleges in this action that the Santa Rosa Indian Community of the Santa Rosa Rancheria (the Santa Rosa Rancheria) failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and statewide propositions. The suit also alleges that the Santa Rosa Rancheria failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended to October 7, 2002. On January 17, 2003, the Santa Rosa Rancheria filed a Motion to Quash Service of Summons and First Amended Complaint. This motion is based upon its claim of tribal sovereign immunity from suit. The FPPC's response to the motion was filed on February 10, 2003. The matter was originally scheduled to be heard on February 20, 2003, but was continued to March 6, 2003 at the request of Defendant. The matter is set to be heard before the Honorable Joe S. Gray, Judge, in Department 54 of the Sacramento County Superior Court at 9:00 A.M. on Thursday, March 6, 2003.